



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

NOV 9 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dr. Roy Vandiver, Treasurer
Georgia Medical Political Action Committee
1330 West Peachtree St. NW
Suite 500
Atlanta, GA 30309

RE: MUR 5813

Dear Dr. Vandiver:

On September 13, 2006, the Federal Election Commission found that there is reason to believe that the Georgia Medical Political Action Committee ("Committee") and you, in your official capacity as treasurer, violated 2 U.S.C. §§ 432(c)(5); 434(b)(2), (3), and (4); and 434(b)(6)(B)(v), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 30 days of your receipt of this letter.

Statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to these questions. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in

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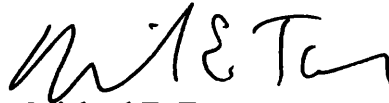
settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public. Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Wanda D. Brown, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Toner", written in a cursive style.

Michael E. Toner
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Georgia Medical Political Action **MUR: 5813**
6 Committee and Roy Vandiver,
7 in his official capacity as
8 treasurer.
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11 **I. INTRODUCTION**

12 As it pertains to these respondents, this matter was generated based on
13 information ascertained by the Federal Election Commission ("the Commission") in the
14 normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

15 As discussed below, there is reason to believe that the Georgia Medical Political
16 Action Committee (the "Committee") and Roy Vandiver, in his official capacity as
17 treasurer, violated 2 U.S.C. § 434(b)(2) and (3) by failing to account for and report
18 certain receipts, as required by the Federal Election Campaign Act of 1971, as amended
19 ("the Act"); and that the Committee and Roy Vandiver, in his official capacity as
20 treasurer, violated 2 U.S.C. §§ 432(c)(5); 434(b)(4) and (6)(B)(v) by failing to accurately
21 account for and report certain disbursements as required by the Act.

22 **II. FACTUAL AND LEGAL ANALYSIS**

23 On October 4, 2005, the Committee's counsel notified Commission staff that the
24 Committee, through an audit, discovered that an employee of the Committee had
25 embezzled both Federal and non-Federal funds by diverting Committee receipts into a
26 bank account known only to the employee and opened for this purpose. According to
27 counsel, this employee was responsible for receiving all incoming funds on behalf of the
28 Committee and the Committee's sponsoring organization, the Georgia Medical

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Roy Vandiver, in his official capacity as treasurer

1 Association, and also had authority to open bank accounts for both organizations.
2 Counsel stated that an outside bank audit was in progress to determine the exact amount
3 of the embezzlement, but that initial information suggested that the employee had
4 diverted approximately \$80,000 in Federal and non-Federal funds.

5 On November 7, 2005, counsel met with Commission staff and informed them
6 that the bank audit had revealed that between November 2003 and March 2005 the
7 employee of the Committee had diverted a total of \$23,700 in Federal receipts into the
8 separate bank account.

9 Counsel also informed Commission staff that the Committee had received
10 reimbursement for these embezzled funds from an insurance company, and sought advice
11 on behalf of the Committee as to how the embezzled funds and the insurance
12 reimbursement should be reported. Commission staff instructed that the embezzled funds
13 should be reported as "disbursements" to the employee, and that the insurance
14 reimbursement should be reported as a receipt to the Committee. Initially, counsel
15 expressed his discomfort with this instruction, stating that such reporting would not
16 reflect the true nature of the disbursements. After several discussions with Commission
17 staff, and his review of FEC disclosure reports in similar embezzlement cases, counsel
18 agreed to instruct the Committee to report the receipts and disbursements per
19 Commission staff instructions.

20 In January of 2006, the Committee amended disclosure reports for 2003, 2004,
21 and 2005 to reflect receipts and disbursements initially excluded as a result of the
22 embezzlement scheme. The amended disclosure reports reveal numerous disbursements

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1 totaling \$23,700 to Stephanie Verden beginning in November of 2003 and ending in
2 March of 2005. The insurance reimbursement, also for \$23,700, was reported in the 2005
3 Year-End report of receipts and disbursements.

4 Although the Committee's failure to accurately report receipts and disbursements
5 stems from Verden's embezzlement of the Committee's Federal funds, the Committee
6 nevertheless violated the Act when it filed the resulting inaccurate reports. Under the
7 Act, the Committee, through its treasurer, is ultimately required to accurately account for
8 receipts and disbursements and correctly report both to the Commission. *See* 2 U.S.C.
9 §§ 432(c)(5); and 434(b)(2), (3), (4), and (6)(B)(v).

10 The Committee discovered the unauthorized diversion of funds and voluntarily
11 reported the embezzlement scheme to the Commission. However, the fact that Verden
12 was able to divert these funds over an extended period of time and had what may have
13 been exclusive control over the receipts of the Committee indicates that the Committee
14 did not have in place adequate internal control procedures (i.e., regular audits, control
15 procedures over receipts and disbursements, segregated duties, or periodic review of
16 finances) that would have prevented the diversion of funds. The failure to implement
17 such controls is a consideration when determining Committee liability. *See* MURs 4389
18 & 4652, *In re Orange County Democratic Cent. Comm.*, Statement of Reasons by a
19 majority of Commissioners at 1-2 (the Commission, in determining committee liability,
20 considered factors such as the committee's internal controls and what reasonably could
21 have been done to prevent the embezzlement).

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- 1 Accordingly, there is reason to believe that the Committee and violated 2 U.S.C.
- 2 §§ 432(c)(5); 434(b)(2), (3), (4) and (6)(B)(v) by failing to accurately report receipts and
- 3 disbursements to the Commission.

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